ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	CC Docket No. 94-129
Long Distance Carriers	)	

To: The Commission

REPLY COMMENTS

SPRINT COMMUNICATIONS CO.

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SUMMARY

With the relatively minor refinements discussed in its initial comments and in these reply comments, Sprint supports the rules proposed by the Commission in this proceeding. However, other parties have proposed a number of additional rules that would increase costs and inhibit competition without necessarily protecting the public from abusive practices. General regulations should be adopted only to address general industry practices, and are no substitute for enforcement action against carriers that engage in improper activities.

Sprint opposes proposals to rigidly regulate the form and language of the LOA. Carriers have legitimate reasons for wanting to tailor the wording of an LOA to the particular audience they are trying to reach. Moreover, differences in industry structure in different parts of country would make it difficult to formulate a "one size fits all" LOA.

Similarly misguided are proposals to require verification of PIC changes resulting from calls to an IXC's 800 number. Sprint is not aware that such calls have caused any significant number of consumer complaints. If the Commission believes otherwise, it should disclose the facts underlying its concerns and provide for further comment.

Consumers who have been switched without their consent should not have to incur unreasonably high charges from an

unauthorized carrier. However, to relieve consumers of any obligation to pay would give rise to rampant toll fraud. Furthermore, to require the alleged unauthorized carrier to compute, to the penny, charges that would have been due under the former carrier's rates would be a practical impossibility. Most carriers today look upon all consumers as potential future customers and have no reason to mistreat them. If consumers can show that they have been overcharged, the alleged unauthorized carrier should accommodate them, and in cases where the consumers are not satisfied, they have recourse to the Commission's complaint process.

Sprint opposes proposals to allow resellers to include their underlying carrier's name on the LOA without that carrier's consent. While the relationship between resellers and underlying carriers can cause confusion to consumers, a better solution is to prevent LECs from misinforming customers by telling them -- through printed statements on monthly phone bills or otherwise -- that they are customers of an underlying carrier in cases where the LEC has been informed that the consumers are customers of a reseller.

Finally, the Commission should reject proposals to require a written LOA or a follow-on mailing after an LOA is received before submitting PIC changes to the local exchange carrier, and should not require local exchange carriers to publicize a "PIC freeze" option to their customers.

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REPLY COMMENTS

Sprint Communications Company hereby replies to the initial Comments of other parties filed in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.

I. INTRODUCTION

As Sprint discussed in its comments, it supports the rules proposed by the Commission in this proceeding. Setting forth the LOA requirements in the Commission's published regulations, prohibiting negative option LOAs, and requiring an LOA to be separate from extraneous promotions are reasonable steps to impose on the industry in an effort to curb unreasonable practices. However, the NPRM also invited comments on a number of other issues, and in response, several commenting parties have proposed extensive and burdensome new regulations governing LOAs and the PIC change process. While those issues are addressed below, they raise a broader issue of regulatory philosophy.

Unauthorized PIC changes are a bad practice: they confuse, irritate and frustrate consumers, they give long distance carriers a bad name and they impose burdens on the local exchange industry. However, general regulations should be adopted only to address general industry practices, not as a substitute for enforcement action against carriers engaging in improper activities. Sprint believes that the carriers accounting for the bulk of the long distance market today go to considerable lengths to guard against unauthorized changes in their internal processes. At the same time, there probably are some "bad actors" in the marketplace -- carriers that will seek to engage in unauthorized PIC changes through fraudulent or deceptive practices. The fundamental issues the Commission faces are whether the imposition of additional regulations and requirements on the industry as a whole will succeed in controlling the behavior of the "bad actors" and if so, whether that change in behavior is worth the additional compliance costs that the new regulations and requirements impose upon other IXCs and, ultimately, their customers.

While this is obviously a question of judgment, Sprint believes that the existing LOA and PIC change requirements, together with the types of specific rule changes the Commission has proposed, are sufficient to set a standard for reasonable behavior. If "bad actors" violate these rules, there is no reason to assume that they will not also violate

any additional rules or requirements that other parties have proposed. Thus, before enacting further rules and requirements, the Commission should undertake vigorous enforcement action to curb practices that violate the rules now in place. Without such enforcement, there is no assurance that any further regulatory measures the Commission would undertake would be effective in stopping improper behavior. Instead, those additional measures could simply increase industry costs and stifle the vigorous competition that exists today in the long distance market.

II. REQUIREMENTS RELATING TO THE FORM AND CONTENT OF THE LOA

A number parties urge the Commission to prescribe the form and/or wording of the LOA. Their proposals include a mandatory title for the LOA, mandatory language for the LOA, and/or requirements relating to type size and appearance.[1]

Sprint believes that prescribing the substantive content of the LOA and requiring that it be of sufficient type size to be clearly readable, as the Commission has proposed in the NPRM,[2] is sufficient, and that prescribing the exact language,

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[1] See, e.g., Southwestern Bell at 2, Allnet at 8, LDDS at 5, National Association of Attorneys General, et al., ("NAAG") at 5 and Joint Comments of the Missouri Office of Attorney General et al. ("Missouri Parties") at 3-4.

[2] However, Sprint agrees with AT&T's point (n.18 at 10) that the reference to the invalidity of selecting multiple carriers in the proposed rule is a somewhat anachronistic holdover from the initial conversion to equal access and should be dropped as a required disclosure on a going-forward basis.

type size, etc., of the LOA would constitute over-regulation. To begin with, carriers have legitimate reasons for wanting to vary the wording of their LOAs in targeting particular segments of the market. The appropriate wording for an LOA targeted at residential customers can be expected to differ from an LOA that is part of a lengthy agreement between a large corporate customer and an IXC. Further, because of differences in industry structure and the status of intrastate regulation, it would be difficult to formulate a single LOA that would be sure to fit all possible variations in the PIC options that are available to consumers. GTE points out (at 3) that in Hawaii, customers may choose one carrier for their interstate calls and a different for their international calls; GCI states (at 3) that in Alaska, consumers can choose one carrier for intrastate calls and another carrier for interstate calls; and as Allnet points out (at 9), some states now allow 1+ intraLATA competition so that consumers can choose one carrier for intraLATA intrastate and another carrier for interLATA intrastate and interstate calls. To attempt to accommodate all of these variations in a "one size fits all" LOA would be difficult unless the LOA were either too vague to be informative or so long as to be unreadable by many consumers. If, however, the Commission decides to prescribe language, type size, titles, etc., for LOAs, it should allow a reasonable period of time for carriers to use

up existing supplies of LOAs that fully comply, as a matter of substance, with the Commission's rules and policies.

A related issue is whether special rules should be promulgated for foreign-language LOAs. As Sprint discussed in its initial comments, it believes that it is sufficient for the Commission to clearly indicate (as it has) that the LOA requirements apply to all LOAs in full regardless of the language in which they appear. Nonetheless, some parties propose a requirement that if any portion of a marketing brochure is in a foreign language, the LOA must be in that language as well,[3] and Southwestern Bell (at 7) would go so far as to require the LOA to be in both English and the foreign language. Obviously, if a brochure is in a foreign language, the LOA should also be in that language. However, the rigid rules proposed by these parties fail to allow for common everyday use of foreign words in the English language and would unduly stifle creativity in advertising and marketing. For example, a marketing brochure, otherwise in English, that includes a phrase such as "Say adios to high long distance rates!" would trigger a Commission-imposed requirement to print the LOA in a language that is beyond the comprehension of the intended audience. Similarly, Southwestern Bell's proposal that the LOA in a foreign-

[3] See, e.g., MCI at 18, NAAG at 10 and Consumer Action at 3.

language brochure must be in English as well as the foreign language serves no readily apparent purpose.

III. RESTRICTIONS ON SALES IN RESPONSE TO CUSTOMER-INITIATED 800 CALLS

Several parties (e.g., NAAG at 10-11, Consumer Action at 3-4, and New York Department of Public Service ("NYDPS") at 6) propose imposing the same verification requirements that now apply to carrier-initiated telemarketing calls to customer initiated calls to the 800 numbers shown in IXC advertisements. There is no foundation for imposing such a requirement. It is entirely reasonable to differentiate, as the Commission's rules presently do, between carrier-initiated and customer-initiated calls. Consumers who receive a call from a carrier are unlikely to have been thinking about their long distance service at the moment they are called, and thus may be somewhat off-guard. However, consumers who initiate calls to an IXC in response to an advertisement display a substantial interest in the possibility of changing carriers.

As Sprint discussed in its initial comments (at 14-16), Sprint is not aware that there is a significant problem of unauthorized PIC changes resulting from customer-initiated calls to IXC 800 numbers. If the Commission believes there is a widespread problem related to such calls today, it should provide the basis for that belief, and indicate whether the problem is industry-wide or confined to a few specific

carriers, so that the parties can comment meaningfully on what course of action (if any) should be taken.

IV. CUSTOMER LIABILITY FOR TOLL CHARGES

One issue that elicited a wide range of opinion was whether consumers who have been subject to an unauthorized PIC change should be liable to the unauthorized carrier for toll charges during the period they were connected to that carrier. Some parties (e.g., Consumer Action, NYDPS and SWB) argue that the unauthorized carrier should receive no revenue from the customer. Other parties (e.g., Allnet, LDDS and MCI) argue that the charges paid to the unauthorized carrier should not exceed those that would have been owed to the previous carrier. AT&T proposes an automatic credit to consumers of 20% on domestic calls and 40% on international calls.

Sprint sympathizes with the notion that a carrier should not profit from improper acts. However, a rule that the asserted unauthorized carrier should receive no compensation at all would clearly encourage toll fraud. Since the LOA process is voluntary, consumers could switch continually from one long distance carrier to another, deliberately refrain from returning their LOAs, rack up sizable monthly phone bills, and claim to have been "slammed" in order to escape liability for their long distance charges. Ultimately, their fraud would raise the costs of service to honest consumers.

In addition, it is often difficult to determine whether a PIC change claimed to have been unauthorized was the product of a deliberate act by a carrier or one of its employees, or whether the PIC change resulted from an honest misunderstanding between the carrier and the customer, or miscommunication within the customer's household or business, or whether "buyer's remorse" prompted the claim of an unauthorized PIC change. While it may serve some sense of justice to deprive the assertedly unauthorized carrier of any revenues from a change resulting from an intentional act of the carrier or its employees or agents, it would be unjust to do so in the other types of disputed PIC changes listed above, and the transaction costs of determining the real reason for the disputed PIC change may be quite high in relation to the amounts involved. Furthermore, a consumer who makes long distance calls should expect to pay a reasonable charge for those calls, even though they may have been handled by an unauthorized carrier.

In that regard, Sprint agrees with the parties who contend that consumers should not pay the assertedly unauthorized carrier more than they would have paid their original carrier. The question is how best to fulfill that objective. A requirement that obligates the IXC, in the case of any disputed PIC change for which the IXC lacks a signed LOA, to determine, in the first instance, the exact charges,

to the penny, that would have been paid to the prior carrier would be administratively unworkable, given the multiplicity of calling plans and carriers that exist today. It would also be unnecessarily burdensome in view of the possibility that the unauthorized carrier's charges may be less than those of the previous carrier,[4] or different by only a few cents in total.

On the other hand, if the consumer complains to the carrier and provides the carrier with sufficient information to show that there was a differential in charges, the carrier should reduce its charges accordingly. Sprint believes this can be done without the imposition of elaborate and burdensome rules. Responsible carriers look upon all consumers as potential future customers and thus have no reason to mistreat customers who claim to be victims of an unauthorized PIC change. If a consumer asserts that he or she has been

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[4] For that reason, it would be difficult to justify any automatic percentage credit, as AT&T has proposed. AT&T claims (at 21) that the credits should be designed "to approximate the rate differential from the customers' designated IXC" and argues (id.) that a 40% credit for international calls is warranted "because international [optional calling plans], to which slammed customers frequently subscribe, generally offer this level of discount from that IXC's basic international direct dial rates." Without knowing who the previous carrier was, what specific plan the customer was on, or what calling plan the customer was enrolled in by the assertedly unauthorized carrier, there would be no way of determining whether the flat credits proposed by AT&T have any validity. The automatic credits AT&T proposes could also unjustly harm carriers in cases where the disputed PIC change was not the product of an intentional act by the carrier or its employees.

overcharged in relation to the rates of the authorized carrier, the assertedly unauthorized carrier has an incentive to make reasonable efforts to accommodate the consumer. If those efforts fail, the consumer still has recourse to the Commission's informal complaint processes.

Sprint wishes to emphasize its support for the propositions that carriers should not profit from unscrupulous acts and that customers who have been switched without their authorization should not be required to pay more than they would have paid their original carrier. However, the Commission should be hesitant to enact detailed regulations which would impose costs on carriers that are disproportionate to the size of the problem to be addressed. Instead, the Commission should rely on the good faith of the industry, in the first instance, and use the complaint process to address the remaining cases of legitimate concern.

Two other proposals have been offered to deter IXCs from engaging in unauthorized PIC changes. Frontier (at 3) requests that the Commission allow local exchange carriers to tariff what amounts to a punitive damages charge for unauthorized PIC changes. It cites, with favor, a decision of the New York PSC allowing exchange carriers to impose a non-cost-based charge of $100. There are two problems with this proposal. Under the Commission's present rules and policies, the only way a IXC can relieve itself of the obligation to pay

an unauthorized PIC change charge is by producing a written LOA, and many consumers simply refuse to sign and return the LOA forms that they have been provided. Thus, IXCs could be assessed these penalties in cases where they did no wrong -- e.g., in the case of buyer's remorse. Second, there is no reason why the local exchange carriers should reap a windfall profit from unauthorized PIC changes. They can and should be allowed to impose unauthorized PIC change charges that would cover the costs they incur in handling disputed PIC changes. But Sprint fails to see the logic in allowing them to recover anything above that amount.

Pacific Bell's proposal is similarly flawed. It suggests (at 2) that the LECs be required to file monthly reports showing each IXC's percentage of disputed PIC changes, and that if any IXC's percentage exceeds some pre-determined threshold (e.g. 2%), the IXC would automatically be fined. If a percentage of disputed PIC changes for a particular carrier were substantially in excess of the industry average, that might provide a "tripwire" for further investigation. However, the problem with the automatic fines Pacific Bell has proposed is that not all instances of disputed PIC changes really are in fact unauthorized changes. Indeed, many claims of unauthorized changes against facilities-based IXCs in fact involve resellers using those carriers and not the underlying carriers themselves. Some facilities-based carriers have

proportionately more reseller customers than others, and if there is a problem with particular resellers, an IXC's percentage of disputed PIC changes could exceed the average through no fault of its own. Unless the LECs could separate the reseller-related disputes from those relating to the underlying carrier, their data would be meaningless.

If a particular carrier has a pattern of widespread unauthorized PIC changes, that pattern will become known to the Commission through informal complaints, and the Commission has ample means at its disposal to take effective action against that carrier. This rifle-shot approach at the problem carriers is a far better way of dealing with the problem than blanket rules that may be costly to administer and may be unjust in their application in particular instances.

V. RESELLER ISSUES

As discussed in its initial comments, Sprint believes that many unauthorized PIC change disputes stem from confusion on the part of customers whose carriers are switchless resellers that do not have their own CIC. In those instances, the CIC code of the underlying carrier will appear instead on LEC records. Some LECs periodically print the name of the long distance carrier on the customer's monthly bill for local service. When a reseller's customer sees the name of an underlying carrier, rather than the reseller's name, the

consumer may believe that an unauthorized PIC change has occurred, when in fact no change has taken place.

The solution to this problem is not to include the underlying carrier's name on the LOA, as some parties (e.g., Southwestern Bell, Allnet, TRA and One Call) suggest. Such a practice could result in resellers passing themselves off as agents of an underlying carrier when in fact no such agency relationship exists. Facilities-based carriers have a name and reputation to protect and are entitled to control the use of their name. Instead, if the IXCs notify LECs that particular ANIs are customers of a reseller of the IXC,[5] the LECs should be precluded from representing to such consumers that they are PICed to the underlying carrier.[6]

Sprint also opposes the proposal of the Florida PSC (at 3) to hold the underlying IXC responsible for failure of resellers to meet the Commission's LOA requirements. Resellers are customers of underlying IXCs, to be sure, but they are also competitors -- indeed long-standing Commission

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[5] It may be noted that some resale relationships are multi-level -- a reseller sells its services to another reseller who has the actual carrier-customer relationship with the end user. Sprint can only identify the reseller with whom it is dealing and has no way of knowing whether or how many such other relationships exist.

[6] In this regard, NAAG proposes that the LECs should be required to notify customers whenever the PIC has been changed. Sprint would oppose any such requirement unless the LEC is required to differentiate between reseller customers and customers of underlying carriers in such a notification.

policies require all carriers to make their services available for resale. Under these circumstances, it would be improper to hold the underlying carriers responsible for acts of reseller-competitors. Furthermore, it is inconsistent with the common carrier concept to hold a carrier responsible for the unlawful acts of its customers, whether or not they are resellers.

VI. OTHER ISSUES

The initial comments raise two other issues that merit brief comment. Certain parties propose additional requirements before a PIC change order can be submitted to the LEC. First, NAAG (at 11-12) would require a written LOA for all PIC change orders, and Home Owners Long Distance (at 7-8) argues that signed LOAs should be followed up with a further mailing from the IXC that would give the customer one more chance to accept or reject the IXC before the IXC could submit the PIC change to the LEC. Both of these proposal are overly restrictive. Given the fact that most consumers simply refuse to take the time to fill out and return an LOA, it would be highly anti-competitive and anti-consumer to prohibit PIC changes from taking place in the absence of a written LOA. That would be akin to prohibiting L.L. Bean from selling a sweater ordered over an 800 number unless the customer followed up the order with a written authorization, a procedure that would be cumbersome for the customer and

service provider alike. Likewise, once the customer has signed and submitted an LOA, there is no point to be served by the further delay that is inherent in the proposal of Home Owners Long Distance.

Sprint also opposes the suggestion of the California Parties that LECs should periodically be required to inform customers of the "PIC freeze" option, whereby a customer must submit a PIC change order in writing directly to the LEC. While there may be valid uses of the PIC freeze option, that option, if widespread, could impede competition and, in instances where the customer has forgotten that he or she invoked this option, could frustrate the customer's desire to change carriers promptly.

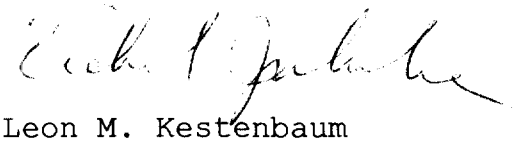
VII. CONCLUSION

The Commission should prescribe the rules it has proposed, subject to the refinements discussed above and in Sprint's initial comments, but should refrain from imposing

additional rules and requirements that only serve to increase the costs of, and impede competition among, carriers that make good-faith efforts to treat consumers responsibly. Such over-regulation is not substitute for enforcement of existing rules against non-complying carriers.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY



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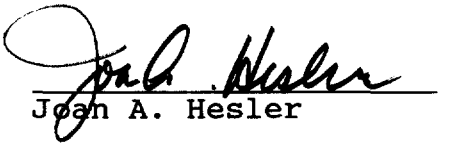
February 8, 1995

CERTIFICATE OF SERVICE

I, Joan A. Hesler, hereby certify that on this 8th day of February, 1995, a true copy of the foregoing **"REPLY COMMENTS OF SPRINT"** was sent via First Class Mail, Postage Prepaid or Hand Delivered to each of the parties listed below.



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